



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-114533

December 29, 1960

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Authorized Certifying Officer
Central Intelligence Agency

Dear [redacted]:

On November 28, 1960, you requested our decision concerning the propriety of the payment of night differential to [redacted] and [redacted], employees of the Central Intelligence Agency, under the facts and circumstances related below; also, you requested our decision concerning the proper salary rate to which [redacted] is entitled.

Your letter points out that both [redacted] transferred from the Government Printing Office to the Central Intelligence Agency effective January 1, 1957, when the printing plant where they were employed was transferred from the Government Printing Office to the Central Intelligence Agency. We understand, also, that the Government Printing Office and the Central Intelligence Agency agreed informally that the Central Intelligence Agency would continue to follow, to the extent practicable, the pay rates and practices of the Government Printing Office after the transfer of the printing plant to its jurisdiction and control. In that connection the Director of Personnel stated in a memorandum to the Chief, Management Staff of the Central Intelligence Agency that:

"This Office will establish and apply wage administration practices for the former GPO positions and personnel as nearly identical as possible with those in effect in the Government Printing Office. This principle has been agreed to by this Office and the Office of Logistics. The Government Printing Office endorses this agreement as essential to assure equity in compensation among printing trades personnel."

Your letter states further that:

"On 29 March 1957, a new Table of Organization was approved which established a new organizational structure for the Main Building Plant and which establishes certain Supervisory positions in the General Schedule at higher compensation rates than applied under the GPO system. * * *

Document No. [redacted]
Review of this document by CIA has determined that
☒ CIA has no objection to declass
☐ It contains information of CIA interest that must remain classified at TS S C
Authority: RR 13-2
☐ It contains nothing of CIA interest
Date 10 03 81 Reviewer [redacted]

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"On 5 May 1957, Mr. [] was promoted from his GPO annual rate of \$6,622 p.a. (Day), \$7,615 p.a. (Night) to GS-12, \$7,570 plus 10% night differential which provided him an annual rate of approximately \$8,138. On 1 December 1957 he was promoted to GS-13 and was compensated at the rate of \$8,990 p.a. plus 10% night differential to total approximately \$9,664. This rate was adjusted to \$9,890 and \$10,632 with night differential on 12 January 1958 as a result of a GS Pay Schedule increase. Throughout this period he served on the same job.

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"Mr. [] appointed to CIA at his former GPO rate of \$7,010 p.a., received a GP Schedule wage adjustment to \$7,343 on 19 May 1957. On 2 June 1957 he was detailed from the day shift to the night shift and served there regularly and continuously for the former Night Shift Production Planner. A memorandum regarding this matter, dated 19 June 1957, is attached as Tab-3. This position, formerly compensated under the GPO system, had been changed to GS-12, \$7,570 base rate, on 29 March 1957 as part of the reclassification of managerial positions mentioned in paragraph 6. Mr. [] was promoted to GS-12 on 22 September 1957 with his pay adjusted from the GPO schedule rate of \$7,343 Day; \$8,444 Night: to the base GS-12 rate of \$7,570 plus 10% night differential. He subsequently received the 12 January 1958 pay increase applicable to GS positions resulting in a rate of \$8,330 plus 10% night differential."

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The questionable payment of night differential resulted from computation by the payroll office based on data furnished on certified Time and Attendance Reports from the Printing Services. That computation resulted in payment of the 10% night differential for hours worked between 4:00 p.m. to 6:00 p.m. and for certain periods of paid leave. An administrative audit disclosed that Mr. [] was overpaid \$822.90, over the period May 5, 1957, to January 9, 1960, and that similarly, Mr. [] was overpaid \$608.25, over the period September 22, 1957, to January 9, 1960.

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For more than 3 months prior to the date (September 22, 1957) that Mr. [] was placed in grade GS-12, he had been assigned to night work at a compensation rate of \$8,444 per annum. However, his compensation in the grade 12 position was fixed on the basis of the day rate of basic compensation rather than on the basis of the higher night rate of basic compensation which he had been receiving for more than 3 months prior to his transfer to the classified position. In that connection your letter states:

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"He was actually promoted from the GP day rate of \$7,343 to the base GS-12 rate of \$7,570. If the night rate of \$8,444 is determined to be his basic compensation, he was entitled to receive not less than this amount upon promotion to GS-12, whereas he actually received, including 10% night differential, a salary of \$8,138 p.a. The lowest scheduled rate in GS-12 which would assure him no loss in basic compensation is that of \$8,000 p.a. or \$8,600 p.a. including night differential. Effecting this adjustment retroactively is permissible since Federal Civil Service and Agency policy provides for a mandatory system of pay adjustment upon promotion to provide that basic compensation received in wage administration positions be used in determining the rate received upon reassignment or promotion to GS positions, and that the individual receive not less than this previous rate if it is within the range of the GS grade. (Federal Personnel Manual, Z1-318 Sec. 25 103). If the promotion action of 22 September 1957 is reprocessed at the \$8,000 p.a. rate, all subsequent personnel actions would have to be reprocessed at appropriate rates."

While the Central Intelligence Agency is expressly excluded from the scope of the Classification Act of 1949, there is no such express exclusion contained in the Federal Employees Pay Act of 1945, as amended. However, the question whether the Central Intelligence Agency is subject to the Federal Employees Pay Act of 1945 is not one which need be decided in disposing of the matter here before us for decision, since we understand from informal discussions with members of your Agency that the Central Intelligence Agency has administratively adopted the Classification Act Schedules and practices as well as the Federal Employees Pay Act provisions, including applicable interpretations of such laws, in determining the compensation and related benefits applicable to those employees of the Central Intelligence Agency who are appointed to positions administratively classified in the GS series. Our decision will be predicated upon that understanding.

We are in agreement with the statement in your letter to the effect that the use of the GS schedule for managerial positions in the printing plant is a matter within the administrative discretion of Central Intelligence Agency management. The agreement entered into between the Central Intelligence Agency and the Government Printing Office would not appear to preclude Central Intelligence Agency from establishing GS positions for managerial personnel at the printing plant, because apparently it was understood that in certain instances the Central Intelligence Agency might depart from the wage scales and

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practices of the Government Printing Office. Moreover, the monetary benefits received by the employees involved incident to their being placed in GS positions exceeded any losses such conversion may have occasioned. Hence, we find no basis upon which to question the conversion of the positions of the personnel involved to the GS schedule.

Since the Federal Employees Pay Act of 1945 authorizes night differential pay only for regularly scheduled work between 6:00 p.m. and 6:00 a.m., there is no authority under its provisions to pay night differential to the employees involved for work performed between the hours of 4:00 p.m. and 6:00 p.m. Neither would there be any authority to pay night differential for periods of leave granted between the hours of 4:00 p.m. to 6:00 p.m., or for any periods of said leave when an aggregate of 8 hours or more paid leave is taken in the pay period. The indebtedness of the employees involved, computed upon the foregoing basis, should be collected.

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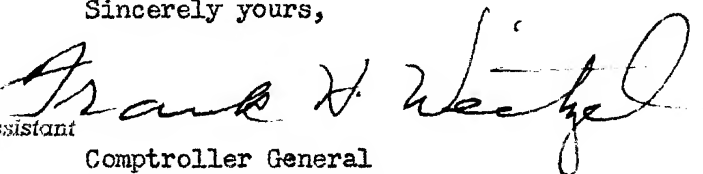
Concerning the salary rate to which Mr. [] was entitled upon his transfer to the GS position, it also is appropriate to determine what his rights would have been had that position, in fact, been subject to the Classification Act of 1949, as amended, 5 U.S.C. 1071, et seq. The facts that you present in your letter reasonably support the conclusion that Mr. [] had been regularly assigned to a night position to fill a vacancy and actually worked in that position for a period in excess of 3 months immediately prior to the conversion of the position to the GS schedule. After such conversion he continued in the same (converted) position. Under the circumstances Mr. [] basic rate of compensation immediately prior to his conversion to the GS grade reasonably may be regarded as the night rate of compensation to which he was entitled immediately prior to such conversion. See 34 Comp. Gen. 708 cited in your letter. Thus, that rate (the applicable night rate in effect immediately prior to conversion) should have been the one relied upon in determining his initial GS salary rate. It follows that Mr. [] compensation should be retroactively adjusted to the date of his conversion to the GS grade so that his initial classified rate plus 10% night differential would not be less than the basic rate of compensation (night rate) he was receiving immediately prior to his conversion. Subsequent adjustments in the compensation of Mr. [] should be reprocessed at appropriate higher rates.

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Sincerely yours,


Assistant
Comptroller General
of the United States

28 November 1960

SUBJECT: Letter to Mr. Campbell, Comptroller General of the
STATINTL United States, concerning proper payment of night
STATINTL differential to [redacted] and Mr.
[redacted] employees of the Central Intelligence
Agency, and to correct GS salary of [redacted]

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CONCURRENCE:

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11/15/60
Date

16 Nov 60
Date

18 Nov 60
Date

11/22/60
Date

23 Nov 60
Date